

TOWN OF LANCASTER
INDUSTRIAL DEVELOPMENT AGENCY
21 Central Avenue
Lancaster, NY 14086
(716) 683-1610

web: www.lancasterny.com
e-mail: lookatus@lancasterny.com

**MEETING MINUTES
REGULAR MEETING OF
LANCASTER INDUSTRIAL DEVELOPMENT AGENCY**

WEDNESDAY, NOVEMBER 12, 2014 AT 8:45 AM

**HELD AT
LANCASTER TOWN HALL
21 CENTRAL AVENUE, LANCASTER, NY 14086**

Meeting called to order by Chairman Fudoli at 8:45 AM

Roll Call: Present: Frank Fialkiewicz
 Steven Hoffman
 Alan Kurtzman
 E. James Nunan
 Kenneth O'Brien
 Dino Fudoli

 Absent: Michael LoCicero
 Robert Benzel, Chief Executive Officer

 Also Present: Richard Grimm, General Counsel/Bond Counsel
 Raymond Caso, General Counsel/Bond Counsel
 David J. Brown, Chief Financial Officer
 Paul Leone, Consultant

PUBLIC HEARINGS: NONE

REGULAR MEETING:

Presentation of Minutes from October 14, 2014 meeting: Motion by Member Kenneth O'Brien, seconded by Member James Nunan, and unanimously approved.

Presentation of Financial Statement for period of October 14, 2014 to November 12, 2014: Motion by Member Frank Fialkiewicz, seconded by Member Steven Hoffman, and unanimously approved.

Chairman Fudoli initiated a brief discussion regarding policy guidance from the NYS Authorities Budget Office for authorized use of IDA assets. Richard Grimm noted that it is his understanding that any use of funds must be related to the furtherance of economic development and be related to an ongoing IDA project. Chairman Fudoli noted that future consideration could be given to a project located in the Village of Lancaster, the Village of Depew, or the Town of Lancaster.

RESOLUTIONS:

1. AMENDED RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") REGARDING THE JPS LABS LLC PROJECT (THE "LESSEE") LOCATED AT 16 LANCASTER PARKWAY IN THE TOWN OF LANCASTER, NEW YORK.

The Lessee has advised the Agency that because it intends to sell its existing real property in East Aurora, New York (the "East Aurora Property") shortly after acquiring the property at 16 Lancaster Parkway, Lancaster, New York (the "Facility Realty") the Lessee desires to defer tax on the sale by structuring the sale of the East Aurora Property and the acquisition of the Facility Realty as a reverse 1031 like-kind exchange ("Reverse 1031 Exchange"). Section 1031 of the Internal Revenue Code requires that all funds involved in a Reverse 1031 Exchange be received by and paid out by a professional "qualified intermediary" (the "Exchange Agent"). The Lessee has advised us that the Exchange Agent for the proposed transaction will be William E. Moran, and that a limited liability company of which William E. Moran is the sole member ("16 Lancaster Parkway LLC") will acquire the Facility Realty and construct an approximately 10,000 square foot manufacturing building thereon, which building is to be acquired and/or leased by the Agency and leased back by the Agency to 16 Lancaster Parkway LLC. Upon completion of the building, 16 Lancaster Parkway LLC will sublease the Project to the Lessee. Within 180 days of the acquisition of the Facility Realty, the sale of the East Aurora Property will be closed, and the Reverse 1031 Exchange will be complete. Upon the closing of the sale of the East Aurora Property, the Exchange Agent will convey all of his interest in 16 Lancaster Parkway LLC to the Lessee or the Lessee's sole owner, Joseph Skubinski.

Raymond Caso gave an overview of the amended resolution being presented. JPS Labs, LLC has requested Agency approval on the amended resolution to allow for the creation of a new entity, 16 Lancaster Parkway, LLC to facilitate the real estate sale of the company's current property in East Aurora and the acquisition of 16 Lancaster Parkway through a reverse 1031 like-kind exchange, as fully described in the amended resolution.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MEMBER FIALKIEWICZ	VOTED	YES
MEMBER HOFFMAN	VOTED	YES
MEMBER KURTZMAN	VOTED	YES
MEMBER LOCICERO	VOTED	WAS ABSENT
MEMBER NUNAN	VOTED	YES

MEMBER O'BRIEN
CHAIRMAN FUDOLI

VOTED YES
VOTED YES

CURRENT BUSINESS

None

NEW BUSINESS

Paul Leone presented information to the Board about a recent request from Tops Markets related to an expanded project at their current distribution warehouse located at 5873 Genesee Street. A new application will be forthcoming and it is anticipated that the company will be requesting additional sales tax exemptions and a possible extension of their existing PILOT. A public hearing will be scheduled for the December meeting regarding this matter.

OTHER BUSINESS

Notice of Claim – Mark Stephen v. LIDA (4087 Walden Avenue – Parker Hannifin Project)

Philadelphia Insurance Company has asked Magavern, Magavern & Grimm to defend the LIDA in this matter. Associated legal fees will be paid by Philadelphia Insurance Company.

Request from P Lane II, LLC – Mr. David Huck of P Lane II, LLC (Park Lane Apartments) has requested a six-month extension of sales tax benefits related to the project at 4845 Transit Road. The Board will approve the requested extension.

NEXT LIDA MEETING – TUESDAY, DECEMBER 9, 2014 AT 8:30 AM

By Motion of Member Frank Fialkiewicz and seconded by Member James Nunan, the meeting was adjourned at 9:10 AM.

E. James Nunan, Secretary

AMENDED RESOLUTION

RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING JPS LABS LLC, 16 LANCASTER PARKWAY LLC, AND/OR AN AFFILIATE, SUBSIDIARY OR ENTITY TO BE FORM ON THEIR BEHALF (THE "LESSEE") TO ACQUIRE PROPERTY LOCATED AT 16 LANCASTER PARKWAY IN THE TOWN OF LANCASTER, NEW YORK AND TO CONSTRUCT THEREON A NEW 10,000 SQUARE FOOT MANUFACTURING BUILDING, AND TO PURCHASE FIXTURES AND EQUIPMENT, AS AGENT FOR THE AGENCY FOR LEASE TO THE LESSEE. THE PROJECT CONSISTS OF DEVELOPMENT AND CONSTRUCTION OF THE NEW MANUFACTURING FACILITY AND RELATED MANUFACTURING FACILITIES UNDER THE NEW YORK STATE INDUSTRIAL DEVELOPMENT AGENCY ACT , AND AUTHORIZE THE LESSEE TO RECEIVE BENEFITS INCLUDING MORTGAGE TAX ABATEMENT AND SALES TAX ABATEMENT AND REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX AGREEMENT.

WHEREAS, JPS Labs LLC has entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a mortgage with lease, leaseback, or lease only transaction of a manufacturing facility under the New York State Industrial Development Agency Act consisting of the construction of an approximately 10,000 square foot manufacturing building located at 16 Lancaster Parkway, Lancaster, New York, which building is to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee, and the acquisition and installation of machinery, equipment, furnishings and fixtures, which machinery, equipment, furnishings and fixtures are to be acquired by the Agency and leased to the Lessee (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the

accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to construct the Project with resultant increase in employment in the Town of Lancaster; that but for the availability of financing and/or other assistance by the Agency, the Lessee would not expand its business within the Town of Lancaster, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lancaster, current employees will be retained and that upon the completion of the Project the Lessee estimates that the Project will employ 7 new full time employees and 1 part time employee and therefore the Project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Lancaster;

WHEREAS, on September 10, 2014, the Agency adopted a resolution (the "Inducement Resolution"), which approved the Project and the Agency's assistance in connection therewith and designated the Lessee as the agent for the Agency to undertake the Project,; and

WHEREAS, the Lessee has advised the Agency that because it intends to sell its existing real property in East Aurora, New York (the "East Aurora Property") shortly after acquiring the property at 16 Lancaster Parkway, Lancaster, New York (the "Facility Realty") the Lessee desires to defer tax on the sale by structuring the sale of the East Aurora Property and the acquisition of the Facility Realty as a reverse

1031 like-kind exchange ("Reverse 1031 Exchange"). Section 1031 of the Internal Revenue Code requires that all funds involved in a Reverse 1031 Exchange be received by and paid out by a professional "qualified intermediary" (the "Exchange Agent"). The Lessee has advised us that the Exchange Agent for the proposed transaction will be William E. Moran, and that a limited liability company of which William E. Moran is the sole member ("16 Lancaster Parkway LLC") will acquire the Facility Realty and construct an approximately 10,000 square foot manufacturing building thereon, which building is to be acquired and/or leased by the Agency and leased back by the Agency to 16 Lancaster Parkway LLC. Upon completion of the building, 16 Lancaster Parkway LLC will sublease the Project to the JPS Labs LLC. Within 180 days of the acquisition of the Facility Realty, the sale of the East Aurora Property will be closed, and the Reverse 1031 Exchange will be complete. Upon the closing of the sale of the East Aurora Property, the Exchange Agent will convey all of his interest in 16 Lancaster Parkway LLC to the Lessee or the Lessee's sole owner, Joseph Skubinski.

WHEREAS, the Lessee and the Agency wish to amend the Inducement Resolution and the Project to facilitate the proposed Reverse 1031 Exchange by providing that 16 Lancaster Parkway LLC (or another limited liability company of which the Exchange Agent is the sole member) be included with JPS Labs LLC as Lessee in connection with the Project, as more particularly set forth herein.

NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c)

there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will provide substantial employment and substantial capital investment; and (e) the Project is necessary for the Lessee to expand and increase employment in the Town of Lancaster. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease only or lease with mortgage transaction; and (g) the Project is an integral part of the Lessee's plans to proceed in the Town of Lancaster.

Section 2. The Agency hereby authorizes the Lessee to proceed with the acquisition and installation of the Project as herein authorized, which Project is ultimately anticipated to be financed through a mortgage transaction with a lease and leaseback transaction or in the alternative through a lease and leaseback only transaction.

Section 3. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee.

Section 4. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to initiate the construction of the building and the Lessee is authorized to initiate the acquisition and installation of machinery and equipment required in connection therewith with a cost not to exceed \$855,900 without further approval by the Agency. The Agency is hereby authorized to enter into Agent Agreements and such other agreements with the Lessee as the Chairman, Vice Chairman or other authorized officer may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and

construction of the Project are hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses with respect to the Project and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof, if applicable.

Section 8. The Agency hereby authorizes the Lessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$855,900.00, as herein authorized. The assistance by the Agency shall be financed through a lease with mortgage or lease, payment in lieu of taxes (PILOT) and installment sale agreement between the Agency and the Lessee on the construction of the Improvements and the purchase and installation of the Equipment required in connection therewith. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) or enters into a lease/leaseback with mortgage transaction with the Lessee or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 10. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 11. The execution and delivery of an Agent Agreement and lease/leaseback between the Agency and the Lessee and the execution of an Agency Agreement being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary are hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all mortgages, security agreements, assignment of leases and rents and all other papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act and does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby agrees to indemnify and holds the Agency harmless from any such loss, damage or

expense with respect to the Project.

Section 14. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null and void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. This resolution shall take effect immediately.

ADOPTED: November 12, 2014

ACCEPTED:

JPS Labs LLC

BY: _____

Name: Joseph Skubinski III
Position: Managing Member

16 Lancaster Parkway LLC, an entity to be formed

BY: _____

Name:
Position: